

§ 3.50

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through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Immigration and Naturalization Service, and on the date of death, still had this status.

(b) *Payment of burial benefits at the full-dollar rate.* VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate, based on service described in § 3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, and was on the date of death:

- (1) Residing in the U.S.; and
- (2) Either—
 - (i) A citizen of the U.S., or
 - (ii) An alien lawfully admitted for permanent residence in the U.S.; and
- (3) Either—
 - (i) Receiving compensation under chapter 11 of title 38, United States Code; or
 - (ii) Would have satisfied the disability, income and net worth requirements of § 3.3(a)(3) of this part and would have been eligible for pension if the veteran's service had been deemed to be active military, naval, or air service.

(c) *Evidence of eligibility.* (1) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(3) In a claim based on the deceased veteran having been an alien lawfully

admitted for permanent residence in the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(4) In a claim for burial benefits at the full-dollar rate, evidence (which may include, for example, a driver's license, lease agreement or utility bills) must establish that the deceased veteran was, on the date of death, residing at a valid street address in the U.S.

(Authority: 38 U.S.C. 107, 501(a))

[66 FR 66767, Dec. 27, 2001]

RELATIONSHIP

§ 3.50 Spouse and surviving spouse.

(a) *Spouse.* “Spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).

(b) *Surviving spouse.* Except as provided in § 3.52, “surviving spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran's death and:

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and

(2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.

[62 FR 5529, Feb. 6, 1997]

§ 3.52 Marriages deemed valid.

Where an attempted marriage of a claimant to the veteran was invalid by reason of a legal impediment, the marriage will nevertheless be deemed valid if:

(a) The marriage occurred 1 year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was born to them before such marriage (see § 3.54(d)), and